

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local	)	CC Docket No. 94-1
Exchange Carriers	)	
	)	
Low Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

**Notice of Proposed Rulemaking**

**REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE**

**On the Revised CALLS Proposal**

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## REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

### I. INTRODUCTION AND SUMMARY

The Competition Policy Institute (“CPI”)<sup>1</sup> appreciates the opportunity to reply to the comments of other parties in the matter of the revised proposal (“CALLS 2”) of the Coalition for Affordable Local and Long Distance Services (“CALLS”). In our original comments on the revised plan, we argued that the Commission should reject CALLS 2 because it is not real access charge reform and because the costs it imposes on consumers outweigh any related benefits. The comments of others reveal much agreement with CPI’s analysis. It is fair to say that the reaction of state regulators and consumer advocates to CALLS 2, for example, ranges from lukewarm tolerance to strong opposition. Outside of the CALLS members themselves, there is very little credible support for the proposal; instead, there is substantial opposition and many reservations about the details of the proposal and the fairness of the process used to this point. Even the lobby groups who support CALLS 2 must go to seemingly great lengths to justify their positions.

In view of these circumstances, CPI renews our advice to the Commission: *send the CALLS negotiators back with instructions to prepare a proposal that is consistent with the public interest*. Specifically, we recommend that the Commission ask the CALLS members to attempt to agree on a proposal that meets three simple guidelines:

1. The PICC should be combined with the Subscriber Line Charge.
2. The cap on the residential subscriber line charge should not exceed \$4.35, the initial level proposed by the parties in the CALLS 2 proposal.
3. Any subsequent CALLS proposal should contain a detailed estimate of the effect the proposal will have on year-to-year access revenues over the life of the plan.

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<sup>1</sup> CPI is an independent, non-profit organization that advocates state and federal policies to promote competition in telecommunications and energy services in ways that benefit consumers. Complete information about CPI can be obtained from our web site at <www.cpi.org>.

## **II. CALLS 2 Gets a Lukewarm Reception Because the Proposal Actually Increases LEC Access Revenues over the Five Years of the Plan.**

In the search for the consumer benefits of CALLS 2, commenters are left examining such marginally relevant issues as whether the IXC's have made sufficient commitments concerning minimum usage charges and whether the details of the proposed USF distribution are correct. These "benefits" are hardly the hallmarks one would expect of true access reform. For more than a decade, the Commission has had the goal of moving carrier access rates toward costs. While CALLS 2 purports to be a "reform," we see upon inspection that it is at best a delay in moving access charges toward costs. As we argued in our initial comments, it is more likely that CALLS 2, if adopted in its current form, signals the end of the Commission's quest to reduce access charges to costs.

We think that the scramble to find consumer benefits in CALLS 2 is doomed for one fundamental reason: CALLS 2 doesn't reduce access charges — it merely shifts them from carriers to consumers and from usage charges to flat rate charges. Simply put, there are, on average, no net consumer benefits from this shift. It is pointless (and misleading) to focus on this or that customer profile to "prove" that consumers are better off under CALLS 2. They are not.

In our comments on CALLS 2, we estimated that consumers would pay more in access charges and universal service support under CALLS 2 than under the *status quo*. Several commenters shared our concern that consumers might pay more.<sup>2</sup> In its comments, MCI provided an economic analysis of CALLS 2 that ratified our estimate.<sup>3</sup> Although the CALLS members

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<sup>2</sup> See Comments of Florida PSC at 2; NASUCA at 10.

<sup>3</sup> Comments of MCI WorldCom at 9 and Attachment 3 at 1.

have refused to place their own analysis of the macro effects of CALLS 2 on the record, MCI appears to have conducted a credible analysis using reasonable assumptions. In sum, MCI concludes that total LEC access revenues (carrier plus end-user) under CALLS 2 will be lower the first year, and then higher in each of Years 2, 3, 4, and 5, compared to the *status quo*. By Year 5, MCI estimates consumers will pay two and one-half billion dollars more each year in access charges than they would have under the *status quo*. At the end of the five year plan, access collections will be \$4.75 billion higher than they would have been otherwise. Here is a summary of MCI's estimates:<sup>4</sup>

<b>Estimated LEC Access Revenues</b>			
	<i><b>CALLS 2 (\$B/yr)</b></i>	<i><b>Status Quo (\$B/yr)</b></i>	<i><b>Difference \$B/yr</b></i>
<i><b>Year 1</b></i>	21.17	21.52	-0.35
<i><b>Year 2</b></i>	20.53	20.42	0.11
<i><b>Year 3</b></i>	20.23	19.38	0.85
<i><b>Year 4</b></i>	20.00	18.39	1.61
<i><b>Year 5</b></i>	19.99	17.46	2.53
<i><b>Total</b></i>			4.75

This \$4,750,000,000 increase in total access revenues amounts to an increase of 4.89% above the projected five-year revenue total without CALLS 2. We wish to emphasize that *the first-year access reduction does not offset higher revenues in subsequent years of CALLS 2*. That is, CALLS 2 will cost consumers more in real (net present value) terms, not just in nominal

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<sup>4</sup> Comments of MCI WorldCom, Attachment 3.

terms.<sup>5</sup>

Since the CALLS 2 proposal actually increases LEC access revenues while shifting them to end-users, it is not surprising that neutral observers, such as public utilities commissions, have trouble concluding that the plan offers any real benefits to consumers. This fact also puts the IXC “pass-through” issues in the correct light. Since total revenues to the LECs will increase under CALLS 2, whether or not IXCs pass through access reductions uniformly to consumers, while important, cannot produce net consumer benefits where there are none. In other words, consumers will pay more under CALLS 2 *even if* IXCs pass through every penny of access reductions.

### **III. If the Commission Adopts CALLS 2, It Will Abandon its Commitment to Using Competition to Produce Lower Access Charges**

Several commenters affirmed one of the major points of CPI’s initial comments: shifting access revenues away from services where ILECs face competition and onto captive customers defeats the Commission’s efforts to use competition to move access charges toward costs. We argued in our earlier comments that adoption of the CALLS 2 proposal might mean that total access charges will never approach economic costs. NASUCA terms CALLS 2 “nothing more than a second attempt by entrenched proponents . . . at imposing mandatory cost recovery on a captive customer base.”<sup>6</sup> The South Dakota PUC claims that CALLS 2 “is abusing monopoly

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<sup>5</sup> Using a discount rate of 10% and the MCI estimates, CALLS 2 will cost consumers more than three billion dollars, in today’s dollars, compared to the *status quo*. Importantly, this is true even if one assumes that the interexchange carriers pass through the full amount of access reductions to consumers.

<sup>6</sup> Comments of NASUCA at 2.

privilege in the name of competition.”<sup>7</sup> Focal Communications argues that the proposal insulates ILEC revenues from competition.<sup>8</sup> Level 3 Communications criticizes the CALLS 2 proposal because it would postpone the benefits of the 1996 Act and points out that the CALLS 2 proposal “precludes the Commission from implementing both planned and proposed pro-competitive reforms to reduce access charges to cost based rates.”<sup>9</sup>

By transforming carrier access charges to end-user surcharges, the CALLS 2 proposal short-circuits the developing competitive market in exchange access and eliminates the ability of the exchange access market to force excess costs out of the LECs’ cost structure and their access rates. The Commission should realize that this is a departure from its current policy, not an adjustment to it.

#### **IV. The Commission Does Not Have An Adequate Record to Approve CALLS 2**

In numerous ways, many commenters made the point that the Commission does not have an adequate record on which it can decide to adopt the CALLS 2 proposal, even if that course were advisable. Level 3 Communications argues that CALLS 2 offers no basis on which the Commission can conclude that the negotiated universal service component of the proposal represents the correct number.<sup>10</sup> Similarly, the State Members of the Universal Service Joint Board argue that there has not been sufficient examination of whether the proposed \$650 million

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<sup>7</sup> Comments of South Dakota PUC at 2.

<sup>8</sup> Comments of Focal Communications at 5, 15.

<sup>9</sup> Comments of Level 3 at 1, 2.

<sup>10</sup> Id. at 4.

universal service component is “sufficient” and “predictable.”<sup>11</sup> The Texas PUC believes that the Commission should consult with the Universal Service Joint Board on the universal service aspects of the proposal.<sup>12</sup> The Wyoming PSC warns that the proposal “should not be mandated in its current form without additional public scrutiny.”<sup>13</sup>

MCI makes the point, raised by CPI in our initial comments, that the record does not even contain an estimate of the overall effect of the changes wrought by CALLS 2 on the Commission’s access charge regime and the prices consumers will pay.<sup>14</sup> The MCI comments are spiced by correspondence between counsel for MCI and counsel for CALLS in which CALLS agrees to provide data about the effect of CALLS 2 to MCI only on the condition that it not be used in this proceeding (among other restrictions).<sup>15</sup> The Wisconsin Public Service Commission reports it cannot obtain sufficient information to evaluate the effects of CALLS 2 and concludes that “[w]ithout those figures in evidence in this proceeding for parties to independently analyze, the Wisconsin Commission believes the record would be deficient for a final decision on the CALLS proposal.”<sup>16</sup> The New Jersey Division of the Ratepayer Advocate adds “. . . CALLS has simply failed to provide full, complete and accurate disclosure and supporting documentation with

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<sup>11</sup> Comments of State Joint Board members at 6.

<sup>12</sup> Comments of Texas PUC at 7.

<sup>13</sup> Comments of Wyoming PSC at 10.

<sup>14</sup> Comments of MCI at 3.

<sup>15</sup> Id. at Attachment 1.

<sup>16</sup> Comments of Wisconsin Commission at 3.

its filing.”<sup>17</sup>

The concern is clear. CALLS proponents have made sweeping claims about their proposal in pleadings and elsewhere.<sup>18</sup> If these claims are true, then it should be possible to demonstrate them on the record before the Commission in a manner that is available to all parties. Until then, we are left wondering, in the immortal words of Clara Peller, “Where’s the beef?” It is certainly not in the record before the Commission.

#### **V. The Commission Should Require a Proposal with Broader Support**

Discussion of another shortcoming of the CALLS 2 proposal permeated the comments: the proposal was developed among a self-selected group of interested parties and does not reflect industry-wide consensus and consumer interests. Allegiance points out that it has been precluded from participation in the CALLS process;<sup>19</sup> Level 3 Communications states that the members of CALLS have failed to engage the competitive LECs and packet-based providers to revise the CALLS proposal, dooming the plan to failure;<sup>20</sup> after publicly complaining that its members were shut out of the CALLS negotiations,<sup>21</sup> ALTS has crafted a competing proposal on behalf of its

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<sup>17</sup> Comments of New Jersey Ratepayer Advocate at 3. *See also* Comments of the Public Utility Commission of Texas at 5: “The Texas PUC urges the Commission to examine the overall reduction in access revenues coupled with increases in SLC and other subscriber charges to determine whether this plan yields the same or better productivity advantages than the current rules.”

<sup>18</sup> *See*, news release from CALLS at <http://www.phonepolicy.com/news/2252000.html>. “This plan does it all,” [Nakahata] said. “It lowers phone bills for virtually every customer and ends the regulatory uncertainty that has prevented consumers from realizing the full benefits of competition from the Telecommunications Act of 1996.”

<sup>19</sup> Comments of Allegiance Telecom at 4.

<sup>20</sup> Comments of Level 3 at 2.

<sup>21</sup> *See* ALTS news release at <http://www.alts.org/NewsPress/022500calls.DOC>. *See also*, Remarks of ALTS President John Windhausen, Jr. at the Winter Committee Meetings of the National Association of Regulatory Utility Commissioners, March 7, 2000.



CLEC members. The ALTS plan is billed as “consumer friendly” and sports several major differences from the CALLS 2 plan.<sup>22</sup>

In a related vein, several commenters noted that the Commission should seek to implement access charge revisions that apply to the entire U.S. telecommunications industry, not merely to the CALLS members. The Iowa Utilities Board “requests that the FCC develop an access reform plan that will be applicable to all companies.”<sup>23</sup> The Montana PSC, which recommends against adopting the CALLS proposal, also argues that the Commission should seek to adopt a national policy, “rather than a policy applying to only willing carriers in parts of the nation.”<sup>24</sup> Similar comments were voiced by the Missouri Public Service Commission.<sup>25</sup>

To underscore the lack of industry consensus on CALLS 2, we note that even some of the CALLS 2 industry supporters (or non-opponents) conditioned their position on the plan not being mandatory. USTA, for example, supports CALLS 2 as a *voluntary* option and notes that the CALLS plan “may not be appropriate for all LECs . . .”<sup>26</sup> Mid-size LECs like Cincinnati Bell, Global Crossing, and Valor Telecommunications Southwest each argue for substantial changes before the CALLS restructuring should apply to them.<sup>27</sup> Of course, other major industry players like MCI WorldCom and U S WEST (in addition to the CLECs mentioned earlier) do not support

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<sup>22</sup> Comments of ALTS and Time Warner at 4 ff.

<sup>23</sup> Comments of Iowa Utilities Board at 7.

<sup>24</sup> Comments of Montana PSC at 2.

<sup>25</sup> Comments of Missouri PSC at 2.

<sup>26</sup> Comments of USTA at 2.

<sup>27</sup> Comments of Cincinnati Bell at 2, Global Crossing at 6 ff.; Valor Telecommunications at 3.

the modified CALLS proposal.<sup>28</sup>

While we do not think the Commission should govern mainly by consensus of the parties, it is helpful to have consensus proposals brought forward. But if the Commission wishes to entertain an industry proposal to address such seemingly intractable problems access charges, it should reasonably insist that the proposal be developed in a process that considers all perspectives. Further, the Commission should assume that the outcome will apply broadly to the industry, and not merely to the players that benefit from the proposal. It is wrong as a matter of policy to allow industry segments and players to self-select the type of regulation that applies. In this case, the Commission should insist that any successor to the CALLS 2 proposal have broader industry and consumer support and be assumed to apply broadly to industry players.

## **VI. Conclusion**

In our initial comments, we argued that the CALLS 2 proposal suffered from three major shortcomings:

- The proposal is (at best) revenue-neutral with respect to the access revenues of price cap local exchange carriers; more likely, the proposal will produce higher access revenues than would the *status quo*.
- The CALLS 2 proposal defeats the Commission's policy of using market forces to drive access charges toward costs. By sharply reducing usage-based access prices (and shifting them to end-users) the proposal blunts the competitive pressures that the ILECs will otherwise feel from CLECs.
- The proposal reduces the likelihood that total access revenues (carrier plus end-user) will ever be reduced in the future by regulatory action.

The comments filed in this case reinforce our view about these shortcomings. We agree with those commenters who think the CALLS 2 plan represents a marginal improvement to the

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<sup>28</sup> Comments of MCI at 31, U S WEST at 13.

original CALLS proposal. While some of the proposal's features would benefit some consumers in specific ways, these benefits are offset by the shift of access cost responsibility away from carriers and onto end-user consumers. This shift occurs at exactly the time when the Commission should be using competitive pressure and prescriptive reductions to reduce access charges. The CALLS 2 proposal appears to ensure that total access charges (carrier plus end-user) will be higher than they would be absent this proposal. This is not progress.

We think the Commission has no choice but to reject the proposal and invite the parties to resume negotiations within guidelines recommended in these comments.

Respectfully submitted,

/s/ \_\_\_\_\_

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